Supreme Court of Pennsylvania.

SMITH v. BROTHERLINE.

An attorney, employed or consulted as such, to draw a deed or an application for an original title to land, is in the line of his profession, and is precluded from buying in, for his own use, any outstanding title.

The relation between him and his client is confidential, and whether he acts upon information derived from him, or from any other source, he is affected with a trust.

But where an attorney was consulted and drew an application for certain land on which the client's improvements were supposed to be, and it appeared afterwards by a more accurate survey that the improvements were on a different tract, the subsequent purchase of the latter tract by the attorney in ignorance of the fact that his client's improvements were on it, will not be held to be in trust.

A verdict for "all land lying in C. county down to the line established by G. and V. in 1849," the said line being the public recorded boundary line of a county, is sufficiently certain.

In ejectment, plaintiff's title was derived from a sale for taxes by the treasurer of Cambria county in 1822. The lands in suit were on or near the boundary line, and from the generality of the description of the boundary lines in the act incorporating the county, it could not be ascertained whether the lands were in the county or not. By a later Act of 1849 commissioners were appointed to "correctly run and distinctly mark the bounadary line, &c., agreeably to the acts defining" the same. *Held*, that in the absence of evidence proving the existence and recognition of a different line by the officers of the county at the time of the sale in 1822, the line established by the commissioners under the Act of 1849 must be treated as the original and true line.

ACTION of ejectment in the Common Pleas of Cambria county, in which there was a verdict for plaintiff; whereupon defendant brought this writ of error.

The opinion of the court was delivered by

SHARSWOOD, J.—The principle of law invoked by the plaintiff in error is happily settled, and clear above and beyond all contention. A counsel or attorney, employed and consulted as such, to draw a deed or an application for an original title for land, is in the line of his profession, and is precluded from buying in, for his own use, any outstanding title. The relation between him and his client is confidential, and whether he acts upon information derived from him or from any other source, he is affected with a trust: *Galbraith* v. *Elder*, 8 Watts 94; *Cleavinger* v. *Reimar*, 3 W. & S. 486; *Henry* v. *Raiman*, 1 Casey 354. This is on the ground of policy, not of fraud; for the attorney may

be entirely innocent of any intention to deceive, and act in the most perfect good faith. It is of the utmost importance that men should be able to intrust, with entire safety, their most secret interests to their professional advisers. Hence the rule is an unbending one, and without exception, that where the attorney buys in a title outstanding or adverse to land as to which he has been consulted or employed, he buys for his client if the client should elect to take it. The *cestui que trust* must of course, if he asks the interposition of a chancellor to assist him, do equity by reimbursing the outlay and costs of the trustee, unless it may be in a case of manifest fraud intended and attempted to be perpetrated.

But the evidence in the court below failed to show any case to warrant the application of the principle. Mr. Brotherline was not consulted or employed in regard to the premises involved in this ejectment. They included two of a block of connected surveys, known as the Barton surveys. At the request of John R. Smith, he drew for him an application to the surveyor-general "for 400 acres of land, situate in Antis township, Blair county, and Clearfield township, Cambria county, Pennsylvania, adjoining lands included in the survey of Benjamin R. Morgan on the east, and lands included in the survey of —— Barton on the west." By the terms of this paper the Barton surveys were expressly excluded. The plaintiff was not consulted as to the title of the Barton surveys, or as to any land included within them. It is true that it is added, "on which said tract of land there is an improvement, erected and occupied by the subscriber since the 27th day of November, A. D. 1852." This was inserted to enable the land office to compute the interest due to the Commonwealth on the purchase-money, and to fix, incidentally, and conclusively as to the applicant, the date of the inception of his right by settlement as against any intervening claims. But it now appears that the fact was not as asserted; that the improvement was not erected on the land applied for, but on other land not included; in fact on a part of the Barton surveys, expressly excluded. There is not a spark of evidence, nor is it even pretended that Mr. Brotherline knew, when he drew the application, or afterwards at any time before he purchased the Barton surveys, that the defendant Smith's improvement was upon them. How, then, can it be pretended that he stood in a confidential relation

as regards these surveys, any more than if he had bought warranted land one hundred miles off, upon which his client had a claim by settlement? The learned judge below took the decision of no question of fact from the jury; for there was no evidence upon which any such question could arise. He might have contented himself with a simple and absolute direction to find for the plaintiff on his paper title. This disposes of all the assignments of error except the 7th, which excepts to the verdict as insensible and void for want of certainty.

The title of the plaintiff below was deduced through a sale for taxes by the treasurer of Cambria county in 1822. He could grant no such title for lands beyond the then ascertained and settled limits of the county, and a subsequent change in them could not enlarge the right of the purchaser. Hence it became a question, what was the county line in 1822, as the Barton surveys lay upon the boundary. Cambria county was erected and laid off from parts of Huntingdon and Somerset by the 6th section of the Act of Assembly of March 26th 1804 (4 Smith 171), and, so far as the line in question is concerned, it was therein described as from "the south-westerly corner of Centre county, on the heads of Mushanon creek southerly along the Allegheny Mountain to Somerset and Bedford county lines," and, by the 7th section, the governor was directed, as soon as convenient, to appoint three commissioners to run the lines. Either this was never done, or no record was made of it. At all events, an Act of Assembly was passed on March 29th 1849 (Pamph. L. 260), appointing James L. Given, of Blair county, and E. A. Vickroy, of Cambria county, "to correctly run and distinctly mark the boundary line or lines between the counties of Blair and Cambria, agreeably to the Acts of Assembly defining the boundaries of said counties." They were directed to transmit a copy of their report and plots to the commissioners of each county. These duties were performed by them. Some evidence was given of a survey of part of the line previously, but the authority under which it was made did not appear. No witness could identify any marks on the ground. The jury were instructed that if there was no other line than that indicated by the Act of Assembly erecting the county, then the fixing that line by the commissioners appointed for that purpose, by the Act of 1849, should be regarded as indicating where it was and had been; unless there was evidence which

showed that the officers of the county at the same time recognised another. No error has been assigned to this part of the charge, and the verdict was for the plaintiff "for all the land lying in Cambria county, down to the line established by Mr. Given and E. A. Vickroy, in the year 1849." Now, if the jury had found any other line in this general way, and referred to by the evidence, oral or written, given on the trial, without describing it with reasonable certainty, it might have been bad, according to *Hagey* v. *Detweiler*, 11 Casey 409; *O'Keson* v. *Silverthorn*, 7 W. & S. 246. But these cases recognise it as settled that the verdict may describe a tract by reference to something of a permanent and public nature, as a recorded deed, or a diagram filed in court, like the draft of a road in the Quarter Sessions. Indeed, this court went much further, and held, in *Tyson* v. *Passmore*, 7 Barr 273, that a verdict for 82½ acres of land, being the land covered by the warrant of survey of July 1832, was sufficiently certain. If the verdict enables the court to give judgment, and the sheriff to deliver possession, where that is required in a *habere facias possessionem*, it will not be disturbed. *Oportet quod res certa deducatur in judicium*, but *id certum est quod certum reddi potest: Green* v. *Watrous*, 17 S. & R. 393. Now, nothing can well be stated more clearly falling within these principles than the public recorded boundary line of a county, made under an Act of Assembly, and filed with a plot in the office of the commissioners.

Judgment affirmed.

United States Circuit Court, District of South Carolina.

LIVINGSTON AND WIFE ET AL. *v.* JORDAN.

During the late civil war the courts of South Carolina had no jurisdiction over parties residing in Maryland by which their rights could be injuriously affected, although suit was commenced by said parties in the courts of South Carolina before the war, and the proceedings were in regard to land in that state. The jurisdiction, however it attached, was suspended during the war.

The stepfather as next friend of two infants filed a petition in chancery in South Carolina, asking a decree to confirm a certain sale of land of the infants, situate in South Carolina. After reference to a commissioner a decree of confirmation was made and a deed executed by the commissioner to the purchaser. The stepfather and infants resided in Maryland, and the petition set forth that the stepfather was guardian, but in fact both infants had at the time of filing the petition attained